



Texas Department of Insurance

Division of Workers' Compensation

Medical Fee Dispute Resolution, MS-48

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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name

PHI AIR MEDICAL

Respondent Name

TEXAS MUTUAL INSURANCE COMPANY

MFDR Tracking Number

M4-14-1352

Carrier's Austin Representative

Box Number 54

MFDR Date Received

January 14, 2014

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "Texas Department of Insurance Division of Workers' Compensation does not have a 'fee schedule' for air ambulance services. . . . It is PHI Air Medical's contention that an MAR would not apply to air transportation. Therefore reimbursement should have been made subject to PHI Air Medical's usual and customary charge. . . . PHI Air Medical Charges are fair and reasonable and consistent with the Department of Labor's definition of usual and customary. . . . PHI Air Medical is extensively regulated by the Federal Aviation Administration under the Federal Aviations Act. That act was amended by the Airline Deregulation Act 49 U.S.C. Section 41713 (the 'ADA') in 1978 in order to impose a single federal regulatory scheme on air carrier thereby precluding state regulation of rates and routes."

Requestor's Position Summary dated June 6, 2014: "But if the Division continues to apply the Texas statute in contravention of the ADA, both statute and rules require application of the 'fair and reasonable' standard."

Requestor's Position Summary dated July 8, 2014: "The air ambulance providers have submitted documentation demonstrating that their market-driven charges represent the cost of doing business, plus a very modest profit margin . . . The Statute and Rules Do Not Allow for Default-to-Medicare Reimbursement"

Requestor's Position Summary dated November 14, 2014: "The affidavits submitted in connection with TMIC's November 13, 2014 letter and any summary of the affidavits in the letter, are not timely submitted, and thus, should be rejected as time-barred."

Requestor's Letter dated November 21, 2014: "If the Division declines to reject the affidavits submitted in connection with TMIC's November 13, 2014 letter (and any commentaries on those affidavits provided by Flahive or TMIC) as time-barred, the providers should be afforded a formal opportunity to detail the glaring inaccuracies contained in both affidavits. Should the Division accept these affidavits as additional evidence prior to rendering a decision on each of the TMIC and Flahive cases, the Division's record would not be complete without responses detailing just how incorrect the experts' assumptions, conclusions and opinions are, given the unique nature of the air ambulance industry and the manner in which the providers' Medicare rate was promulgated."

Amount in Dispute: \$15,787.60

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "PHI Air is entitled to a 'fair and reasonable amount' under 28 Tex. Admin. Code § 134.1(f). . . . In this case, Texas Mutual has applied the fair and reasonable reimbursement rate of 125% of the Medicare reimbursement fee provided to air ambulance providers."

Response Submitted by: Texas Mutual Insurance Company

Respondent's Position Summary dated June 5, 2014: "The proper payment standard to apply in these cases in [sic] the Medicare rate pursuant to 28 Tex. Admin. Code § 134.203(b) and (c) . . . In the alternative, the DWC should consider whether the current Medical Fee Guideline amount of 125 percent of Medicare is the best indication of a 'fair and reasonable' reimbursement. . . . MFDR has published medical dispute decisions that state the correct amount to be paid for air ambulance services is the amount calculated under 28 Tex. Admin. Code 134.203(d), *i.e.*, 125 percent of Medicare. Medicare has published a Medicare Ambulance Fee Schedule. As a result, the air ambulance Medicare rate forms the basis for fair and reasonable reimbursement for air ambulance services in the Texas workers' compensation system and this is consistent with the statutory directives."

Response Submitted by: Texas Mutual Insurance Company

Respondent's Position Summary dated November 13, 2014: "Reimbursement at 125% of Medicare Is Fair and Reasonable and Meets the Standards of Texas Labor Code § 413.011."

Response Submitted by: Graves Dougherty Hearon & Moody

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
September 19, 2011	Air Ambulance Services	\$15,787.60	\$0.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. On May 6, 2014 both the requestor and respondent in this dispute were given the opportunity to supplement their original MFDR submission, position or response as applicable. The Division received supplemental information as noted in the position summaries above. The supplemental information was shared among the parties as appropriate. The documentation filed by the requestor and respondent to date will be considered in determining whether the services in dispute are eligible for reimbursement.

Issues

1. Does the federal McCarran-Ferguson exempt the applicable Texas Workers' Compensation medical fee guideline from preemption by the federal Airline Deregulation Act?
2. Did the requestor waive the right to medical fee dispute resolution?

Findings

1. The requestor maintains that the Federal Aviation Act, as amended by the Airline Deregulation Act (ADA) of 1978, 49 U.S.C. §41713, preempts the authority of the Texas Labor Code to apply the Division's medical fee schedule amount. This threshold legal issue was considered by the State Office of Administrative Hearings (SOAH) in *PHI Air Medical v. Texas Mutual Insurance Company*, Docket number 454-12-7770.M4, *et al.* SOAH held that "the Airline Deregulation Act does not preempt state worker's compensation rules and guidelines that establish the reimbursement allowed for the air ambulance services . . . rendered to injured workers (claimants)." SOAH found that:

In particular, the McCarran-Ferguson Act explicitly reserves the regulation of insurance to the states and provides that any federal law that infringes upon that regulation is preempted by the state insurance laws, unless the federal law specifically relates to the business of insurance. In this case, there is little doubt that the worker's compensation system adopted in Texas is directly related to the business of insurance . . .

The Division agrees. The Division concludes that its jurisdiction to consider the medical fee issues in this dispute is not preempted by the Federal Aviation Act, or the Airline Deregulation Act of 1978, based upon SOAH's threshold issue discussion and the information provided by the parties in this medical fee dispute. The disputed services will therefore be decided pursuant to Texas Labor Code §413.031 and all applicable rules and fee guidelines of the Texas Department of Insurance, Division of Workers' Compensation.

2. To be eligible for medical fee dispute resolution, a request must be timely filed in accordance with 28 Texas Administrative Code §133.307(c)(1), which states:

Timeliness. A requestor shall timely file the request with the division's MFDR Section or waive the right to MFDR. The division shall deem a request to be filed on the date the MFDR Section receives the request. A decision by the MFDR Section that a request was not timely filed is not a dismissal and may be appealed pursuant to subsection (g) of this section.

- (A) A request for MFDR that does not involve issues identified in subparagraph (B) of this paragraph shall be filed no later than one year after the date(s) of service in dispute.”

The date of the services in dispute is September 19, 2011. The request for medical dispute resolution was received in the Medical Dispute Resolution (MDR) section on January 14, 2014. This date is later than one year after the date(s) of service in dispute. Review of the submitted documentation finds that the disputed services do not involve issues identified in §133.307(c)(1)(B). The Division concludes that the requestor has failed to timely file this dispute with the Division's MDR Section; consequently, the requestor has waived the right to medical fee dispute resolution.

Conclusion

The Division finds that the requestor has waived the right to medical fee dispute resolution for the services in dispute. For that reason, the merits of the issues raised by the parties to this dispute have not been addressed.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to \$0.00 reimbursement for the services in dispute.

Authorized Signatures

_____	_____	_____
Signature	Grayson Richardson Medical Fee Dispute Resolution Officer	February 2, 2015 Date

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute has a right to seek review of this decision in accordance with 28 Texas Administrative Code §133.307, effective May 31, 2012, *37 Texas Register 3833*, **applicable to disputes filed on or after June 1, 2012.**

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the Division within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the Division using the contact information listed on the form or to the field office handling the claim.

The party seeking review of the MDR decision shall deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §141.1(d).

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.